

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

TAURUS CALDWELL

PETITIONER

V.

NO. 4:08CV088-A-D

ED HARGETT, et. al

RESPONDENTS

CERTIFICATE OF APPEALABILITY

A notice of appeal having been filed in the above captioned case from either the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a state court or the final order in a proceeding under 28 U.S.C. § 2255, the court, considering the record in the case and the requirements of FRAP 22(b) and 28 U.S.C. § 2253(c), hereby finds that:

PART A

___ the applicant has made a substantial showing of the denial of a constitutional right.
SPECIFIC ISSUE(S):

X a certificate of appealability should not issue.

REASONS FOR DENIAL: For the reasons stated in the opinion (Report and Recommendation), the court finds that the Petitioner has failed to "demonstrate that the issues are debatable among jurists of reason; that a court could resolve issues in a different manner; or that the questions are adequate to deserve encouragement to proceed further." *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4, 103 S. Ct. 3383, 3394 n.4, 77 L. Ed. 2d 1090 (1993) (citations and quotations omitted). Specifically, the court finds, for the reasons set forth in the Report and Recommendation dated December 5, 2008, adopted as the opinion of the court, that Petitioner's conviction and sentence are not unconstitutional.

PART B

_____ the party appealing is entitled to proceed *in forma pauperis*.

X the party appealing is not entitled to proceed *in forma pauperis*.

REASONS FOR DENIAL: The Court finds that the Petitioner's appeal is not taken in good faith because it is frivolous and has no possibility of success. *See* FRAP 24.

Date: March 23, 2009

s/ Sharion Aycock
UNITED STATES DISTRICT JUDGE